JOURNAL, 297. The insertion of the estimated tonnage in the instant case serves, therefore, only to make the terms of the contract more certain. The lack of mutuality is also negatived by the fact that the plaintiff is under a duty to order the amount actually required in his business. *Jenkins & Co. v. Anaheim Sugar Co.* (1918, C. C. A. 9th) 247 Fed. 958. Hence, the interpretation of the intention of the parties seems sound. See *Lima Locomotive & Machine Co. v. Nat'l Steel Castings Co.* (1907, C. C. A. 6th) 155 Fed. 77.

CRIMINAL LAW—SUICIDE—"ADMINISTERING" POISON TO ANOTHER.—The wife of the accused was incurably ill and had tried to end her suffering by drinking poison. Having once failed, she requested her husband to mix Paris Green and water in a cup and place it within her reach. He did so, but in no other way encouraged her purpose. A statute made "murder by means of poison," murder in the first degree. *Held,* that accused was guilty of murder in the first degree. *People v. Roberts* (1920, Mich.) 178 N. W. 690.

See COMMENTS, *supra,* p. 408.

INSURANCE—SUICIDE OF INSURED NOT AN IMPLIED EXCEPTED RISK.—One Johnson, who was insured by the defendant companies, committed suicide, while sane, more than two years after the policies were issued. One policy, payable to his wife, contained a provision that it should be void if the insured should die by his own hand within two years. The other policy, payable to his administrator, contained a provision that it should be incontestable after one year, except for non-payment of premiums. *Held,* that the companies were liable on the policies. *Northwestern Mutual Life Ins. Co. v. Johnson* and *National Life Ins. Co. v. Miller* (1920, U. S.), 41 Sup. Ct. 47.

See COMMENTS, *supra,* p. 401.

SALES—IMPLIED WARRANTIES OF WHOLESOMENESS—STOCK SOLD FOR FOOD.—The plaintiffs purchased 22 hogs from the defendant, a stock dealer. Within thirty-six hours thereafter the hogs became sick and commenced dying from cholera. The plaintiffs brought an action to recover the purchase price. An instruction was given that, if the defendant sold these hogs to the plaintiffs knowing that they intended to use them for food, then the defendant impliedly warranted them to be fit for that purpose. *Held,* that the instruction was erroneous, as this was a case of *caveat emptor. Wells v. Welch* (1920, Mo. App.) 224 S. W. 120.

The instruction held to be erroneous suggests what would seem to be the better rule. It is impossible to justify on any grounds such a rigid application of the doctrine of *caveat emptor.* See (1920) 6 VA. L. REG. (N. S.) 389. The doctrine has been recently so restricted as to be almost abrogated. *Foote v. Wilson* (1919) 104 Kan. 191, 178 Pac. 430. For a thorough analysis of the subject see COMMENTS (1920) 29 YALE LAW JOURNAL, 782.

TAXATION—FEDERAL INCOME TAX—GAINS REALIZED ON SALE OF SECURITIES NOT INCOME.—The plaintiff paid under protest a federal income tax for the year 1916, assessed on the basis of gain derived from the sale of bonds. The bonds had been purchased before March 1, 1913, and on that date their market value was much lower than the purchase price. In 1916 they were sold by the plaintiff, certain of them at their original cost to him, others at a slight advance over cost price, but all at a great advance over their market value on March 1, 1913. In each case the difference between the sale price and the market value on that date was taxed as income. The plaintiff was not engaged as a trader in stocks or bonds, but had purchased the bonds for investment. He brought suit to recover the tax. *Held,* that the tax was illegally imposed and that the

plaintiff was entitled to judgment. *Brewster v. Walsh, Collector* (Dec. 16, 1920, U. S. D. C., D. Conn.) No. 2133 (not yet officially reported).

See COMMENTS, *supra*, p. 396.

TAXATION—STATE ENTERPRISES AS LEGITIMATE PURPOSE.—The legislature of North Dakota created a state bank, an industrial commission with unprecedented powers, and a home building association; it issued bonds to furnish capital for the bank, and provided for state manufacturing, marketing, and operation of grain elevators and flour mills, declaring that the state would furnish homes to its residents and that bonds would issue to replace the funds its bank might employ in making loans on private real estate. Taxpayers sought to enjoin the enforcement of this legislation. *Held,* that when the people, the legislature, and the highest court of a state declare a purpose of public nature, the Supreme Court will not interfere unless beyond reasonable controversy the federal Constitution has been violated. *Green v. Frazier* (1920, U. S.) 40 Sup. Ct. 499.

The decision settles the much-questioned constitutionality of the Non-Partisan League's Legislative program. Except for its extreme application as illustrated in the instant case, the doctrine has often been tested before. See COMMENTS (1918) 27 YALE LAW JOURNAL, 824.

WILLS—PERPETUITIES—TRUST OF PERSONAL PROPERTY NOT VIOLATION OF STATUTE.—A testator bequeathed his residuary estate to a trustee to be held as follows: The income was to be divided among all the testator's children living at the time of the testator's death. When the youngest child reached the age of thirty years, the trustee was directed to divide one half of the corpus of the estate among the same beneficiaries, and when the youngest child reached the age of forty, the remainder was to be similarly divided. The Minnesota statute against perpetuities did not specifically exempt personal property. Minn. Gen. St. 1913, sec. 6710. *Held,* that the trust was valid even though it suspended the power of alienation beyond the statutory period, since personal property only was the subject of the trust. *In re Bell's Will* (1920, Minn.) 179 N. W. 650.

The decision is in accord with the rule laid down in an earlier case. *Y. M. C. A. v. Horn* (1913) 120 Minn. 404, 139 N. W. 805. But as has been pointed out, that decision could be defended only on the ground that the court was justified in making a strained statutory interpretation in order to validate a bequest to charity which would otherwise have failed, since charitable trusts are not permitted in Minnesota. See Thurston, *Charitable Gifts and the Minnesota Statute of Uses and Trusts* (1917) 1 MINN. L. REV. 226-229. Although the court recognized the force of the criticism of the former decision, and although there was not the same justification for it in the instant case, yet it felt itself bound by it, with the anomalous result of having a private trust of personal property not affected by the rule against perpetuities.